IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 43 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SWAGAT ICE FACTORY - Petitioner(s)

Versus

CHIEF MANAGER, TORRENT POWER AEC LTD - Respondent(s)

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Appearance :

MS.A R.VYAS for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,
MR KB PUJARA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/01/2006

ORAL JUDGMENT

1.By way of this petition under Article 226 of the Constitution of India, the petitioner – Swagat Ice Factory has prayed for an appropriate writ, direction

or order to quash and set aside the supplementary theft bill which according to the petitioner is wrongly prepared without considering the provision of Supply Code of the company. The petitioner has also further prayed to direct the respondent company to issue him the bill as per the Act and as per the practice followed in the appellate order and further directing the respondent company to restore the electricity supply. The petitioner has also prayed to direct the respondent company to rectify Section 135 of the Electricity Act and to issue him a supplementary bill under Section 126 of the Electricity Act of 2003 and to reconnect the power supply of the petitioner. The petitioner has also prayed for directing the respondent company to test the said disputed meter in the laboratory by doing similar wiring of so called neutral circuit and on-off switch in presence of technical person of the petitioner and Electrical Inspector and if the “Y” phase is disturbed and found tampered with with the said wiring and on-off switch, then and then, the petitioner should be booked under theft otherwise he should not be issued any bill and till the time the laboratory testing is done, the power supply of the petitioner should be restored.

2.It is the case on behalf of the petitioner that the petitioner is the consumer of respondent – Electricity Company and his consumer number is 728123. That on 18.11.2005, the checking officer of the respondent company checked the connection of the petitioner and at the time of checking, the meter of the petitioner was working and showing consumption and the meter was working properly and the said meter was fixed in a sealed Metal Meter Box and the seal of M.M.B. was intact and the respondent company had not issued any supplementary theft bill. It is also the case of the petitioner that on 21.11.2005, the respondent company again checked the installation of the petitioner and for the alleged theft of electricity, the respondent disconnected the power supply of the petitioner and not only that but the company lodged F.I.R. against the petitioner wrongly just to harass the petitioner and issued him a supplementary theft bill by calculating on very higher side without following the instruction of the supply code of G.E.R.C. and therefore, the petitioner has preferred the present Special Civil Application for the aforesaid reliefs.

3.Ms. Vyas, learned advocate appearing on behalf of the petitioner has vehemently submitted that the supplementary bill issued by the respondent company for the alleged theft is absolutely illegal and on very higher side without following instruction of the supply code of G.E.R.C. It is the contention on behalf of the petitioner that in fact, it is not a case of theft for which the case can be booked under Section 135 of the Electricity Act of 2003 and the case falls within the purview of Section 126 of the new Electricity Act. It is also further submitted that the respondent company before issuing the supplementary bill has not tested the meter in the laboratory by the Electrical Inspector and therefore, the impugned supplementary bill is illegal. It is also further submitted that the meter was installed on 4.10.2005 and therefore, the question of pilferage does not arise prior to 4.10.2005 and the theft bill of the petitioner was made from 4.10.2005 and onwards. It is also further submitted that before issuing the supplementary bill, no notice has been issued and therefore, for all these reasons, it is requested to allow the present Special Civil Application.

4.In response to the notice issued by this Court, Shri K.B.Pujara, learned advocate appears on behalf of the respondent company and an affidavit-in-reply is also filed on behalf of the respondent company. In the affidavit-in-reply it is stated that the petitioner is referring to claiming reliefs with regard to Service No.728123 which is in the name of Partner, Swagat Ice Factory and with regard to the said Service, the petitioner has not paid even the regular energy bill charges of Rs.2,09,189.14 ps. and for which the respondent has already filed Summary Civil Suit No.2305 of 2005 before the learned City Civil Court at Ahmedabad and pursuant to the order passed by the learned City Civil Court in the said Summary Civil Suit, the Court Commissioner has prepared the panchnama dated 28.12.2005 and as revealed from the said panchnama, two ice factories viz. Swagat Ice Factory and National Ice Factory are situated in the same premises and one Yashwantkumar Manilal Chaudhari is the Proprietor/Partner of both the said ice factories. The National Ice Factory is having Service No.692402 and the said Service has checkered history of indulging into malpractices and theft of energy. It is also further submitted in the affidavit-in-reply that for

visit dated 1.8.1995 assessment of Rs.12,16,454/- was carried out for the said Service and thereafter, it was again found indulging into malpractice and theft of energy for which it had made part payment of Rs.25000/- towards the assessment. It is also further submitted in the affidavit-in-reply that Swagat Ice Factory has Service No.728123 and it has also a checkered history of indulging into malpractices and theft of electricity. It is submitted that on 31.5.1995 it was found committing theft of electricity for which Rs.50000/- were paid cash on the spot and assessment of Rs.11,46,185/- was carried out. Thereafter theft was again found on 13.2.1996 for which assessment of Rs.3,74,504/- was carried out. Once again on 28.5.1997, theft of electricity was found for which assessment of Rs.3,49,228/-was made. It is further submitted in the affidavit-in-reply that the present disconnection of Service No.728123 made on 21.11.2005 is arising from a clear case of theft of electricity wherein, the petitioner was found to have made permanent arrangement by installing two way switch for tampering with the registration of energy and joint inspection report was prepared by the Electrical Inspector of the State Government and the Inspectors of the respondent. It is

also further submitted that the assessment for theft of electricity has been carried out as per the norms for a sum of Rs.14,51,415/- and the petitioner was issued notice of assessment and demand dated 22.11.2005 and that the Criminal Complaint No. I CR No.809 of 2005 of GEB Police Station, Sabarmati has been registered against the petitioner for offence of theft of electricity under Section 135 of the Electricity Act. It is also further submitted that the petitioner has alternative remedy before the Special Court to challenge the assessment of theft of energy but so far as restoration of supply is concerned, even the Supply Code makes it clear that the restoration can be granted only on making full payment of the assessment amount and therefore, it is requested to dismiss the present Special Civil Application.

5. Shri Pujara, learned advocate appearing on behalf of the respondent company while relying upon the affidavit-in-reply has further submitted that *whether the petitioner has committed theft of electricity or not* is required to be now considered by the Special Court as the Criminal Complaint for the offence under Section 135 of the Electricity Act of 2003 has been

filed and therefore, the contention on behalf of the petitioner that the petitioner has not committed any theft, cannot be accepted at this stage. It is also further submitted that so far as the contention on behalf of the petitioner to send the meter to the laboratory Inspector i.e. Electrical Inspector is concerned, it is submitted that in fact, the inspection was carried out in the presence of the Electrical Inspector who has carried out the panchnama and it was found that the petitioner has indulged into malpractice and committed offence under Section 135 of the Act and therefore, the contention on behalf of the petitioner that unless the meter is sent to the laboratory Inspector, the supplementary bill cannot be issued, has no substance.

6. Heard the learned advocates appearing on behalf of the parties.

7. It is not in dispute that the Criminal Complaint is already filed against the petitioner by the respondent for the alleged theft and for the offence under Section 135 of the Electricity Act of 2003 and the said complaint is to be tried by the learned Special Court.

It is the contention on behalf of the respondent that the petitioner has committed theft of electricity and the petitioner was found to have made permanent arrangement by installing two way switch for tampering with the registration of the energy and the joint inspection report was prepared by the Electrical Inspector of the State Govenment and the Inspectors of the respondent, against which the contention on behalf of the petitioner is that the same cannot be said to be a case of theft and Section 135 of the Act is not attracted and the respondent is required to have the assessment after following procedure as required under Section 126 of the Act of 2003. It is required to be noted that the Criminal Complaint under Section 135 of the Act is filed before the competent Court and now the complaint will be tried by the learned Special Court and on appreciation of evidence it can be decided by the learned Special Court *whether the petitioner has committed any theft or not*. This Court in exercise of powers under Article 226 of the Constitution of India is not required to decide at this stage *whether the petitioner has committed theft as alleged under Section 135 of the Act of 2003 or not* and therefore, the contention on behalf of the petitioner that as Section

135 of the Act was not attracted and that the petitioner has not committed any theft, cannot be accepted at this stage.

8. So far as the contention on behalf of the petitioner that the meter was not sent to the laboratory Inspector i.e. now Electrical Inspector is concerned, it is required to be noted that at the time of inspection, the Electrical Inspector from the State Government was present and has prepared the panchnama and the inspection was carried out in his presence and therefore, the authenticity cannot be doubted.

9. So far as the prayer on behalf of the petitioner to reconnect the electricity supply is concerned, in view of the fact that it is alleged by the respondent that some charges are not paid and not only that even as per the Supply Code whenever there is a case of theft, the respondent can disconnect the electricity supply unless the entire amount of assessment under Section 135 of the Act is paid and/or deposited and therefore, the prayer of the petitioner to reconnect the electricity supply cannot be granted.

10.So far as the other contention on behalf of the petitioner which are referred herein above are concerned, the same involves the disputed question of facts which cannot be determined and/or decided in a petition under Article 226 of the Constitution of India.

11.Under the circumstances and for the reasons stated above, there is no substance in the present Special Civil Application and the same is required to be dismissed and is, accordingly, dismissed.

(M.R.SHAH, J.)

kdc.